

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

JACOB SMITH,  
Plaintiff,

vs.

THOMAS WILSON, LEROY KIRKEGARD,  
BEAU BALTEZAR, DANIEL SEGOVIA,  
MIKE BATISTA, TOM WOOD, MICHELE  
STEHYH, MITCHELL CALES, JASON  
GRIMMIS, PAUL REES, and AMBER  
EDWARDS,

Defendants.

CV 17-00119-H-DLC-JTJ

ORDER

Pending are the parties' ten motions for summary judgment and Plaintiff Jacob Smith's Motion for a 30-Day Extension to Respond to the State Defendants' Motions for Summary Judgment (Doc. 111) and Motion for an Order to Expunge Plaintiff's Affidavit and Attachments Doc. 103-1 (Doc. 112).

**I. State Defendants' Motions for Summary Judgment<sup>1</sup>**

On September 26 and 27, 2019, the State Defendants filed five motions for summary judgment (Doc. 76—Motion for Summary Judgment for Failure to

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<sup>1</sup> Defendant Grimmis filed a Motion for Summary Judgment (Doc. 84) on September 27, 2019 and Mr. Smith filed a response to that motion on October 21, 2019. Mr. Smith filed a Motion for Summary Judgment regarding his claims against Defendant Grimmis (Doc. 100) on October 2, 2019. Defendant Grimmis filed a response to that motion on October 23, 2019. Pursuant to Local Rule 7.1(d)(1)(D), those motions are now ripe for ruling.

Exhaust Administrative Remedies, Doc. 80—Motion for Summary Judgment on Deliberate Indifference Claims, Doc. 88—Motion for Summary Judgment on Retaliation Claim, Doc. 92—Motion for Summary Judgment on Excessive Force Claim, and Doc. 96—Motion for Summary Judgment on Supervisory Liability Claim). Defendant Styeh’s Motion for Summary Judgment (Doc. 88) has been denied and Defendant Styeh has been dismissed. (Doc. 136.)

On October 8, 2019, the Court granted Mr. Smith’s motion to amend his complaint and the Second Amended Complaint (Doc. 107) was filed. On November 1, 2019, in light of the filing of the Second Amended Complaint, the State Defendants filed a Notice with Respect to Refiling of Motions (Doc. 119) indicating that their motions for summary judgment should be deemed withdrawn. The State Defendants then filed four new motions for summary judgment. (Docs. 120, 124, 128, and 132.) In light of Defendants’ Notice, the Court deems Documents 76, 80, 92, and 96 withdrawn without prejudice.

## **II. Motion for Extension**

In light of the withdrawal of the State Defendants’ Motion for Summary Judgment, Mr. Smith’s motion for extension is now moot. The Court, however, notes that Local Rule 7.1(d)(2)(D) provides that “Filing serial motions to avoid word limits may result in denial of all such motions.” The word limit for briefs in support of motions for summary judgment is 6500 words. L.R. 7.1(d)(2)(A).

Although the State Defendants' motion for summary judgment on supervisory liability does not include a certificate of compliance as required by Local Rule 7.1(d)(2)(E), the Court has estimated that Defendants' briefs in support of their four motions for summary judgment consist of approximately 15,684 words—nearly two and a half times the word limit. This practice of serial motions not only burdens the Court but also Mr. Smith who is a pro se litigant incarcerated in Montana State Prison with limited resources. This practice should be avoided in the future. For purposes of this case, the Court will set forth a briefing schedule allowing Mr. Smith sufficient time to respond to each motion. Should he so choose, Mr. Smith may file one consolidated response to Defendants' motions for summary judgment

### **III. Motion to Expunge**

Mr. Smith seeks to replace attachments which were inadvertently filed without being redacted. (Doc. 112.) He has submitted a supplemental affidavit with redacted attachments. The Court will direct the Clerk of Court to seal Document 103 and file Mr. Smith's supplemental affidavit with redacted exhibits.

Based upon the foregoing, the Court issues the following:

### **ORDER**

1. The State Defendants' Motions for Summary Judgment (Docs. 76, 80, 92 and 96) having been WITHDRAWN shall be terminated by the Clerk of Court.

2. Mr. Smith's Motion for a 30-Day Extension to Respond to the State Defendants' Motions for Summary Judgment (Doc. 111) is DENIED AS MOOT. Mr. Smith shall have until **December 2, 2019** to respond to Defendants' new Motion for Summary Judgment for Failure to Exhaust Administrative Remedies (Doc. 120). Mr. Smith's response(s) to the State Defendants remaining motions (Motion for Summary Judgment on Excessive Force Claim (Doc. 124), Motion for Summary Judgment on Deliberate Indifference Claims (Doc. 128), and Motion for Summary Judgment on Supervisory Liability Claim (Doc. 132) shall be filed on or before **January 10, 2020**.

2. Mr. Smith's Motion for an Order to Expunge Plaintiffs' Affidavits and Attachments Doc. 103-1 (Doc. 112) is GRANTED. The Clerk of Court shall seal Document 103 and file Mr. Smith's supplemental affidavit with redacted exhibits.

DATED this 4th day of November, 2019.

/s/ John Johnston  
John Johnston  
United States Magistrate Judge